

ORIGINAL

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In re Applications of

MM DOCKET NO. 93-42

MOONBEAM, INC. )

File No. BPH-911115MG )

GARY E. WILLSON )

File No. BPH-911115MO )

For a Construction Permit  
 New FM Station on Channel 265A  
 in Calistoga, California )

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FEB 28 1994

TO: The Honorable Edward Luton  
 Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF SECRETARY

**SUPPLEMENT TO PETITION TO REOPEN THE  
 RECORD AND ENLARGE ISSUES AGAINST MOONBEAM, INC.**

Gary E. Willson (Willson) files this supplement to his Petition to Reopen the Record and Enlarge Issues Against Moonbeam, Inc. (Moonbeam). Willson seeks to incorporate in his Petition yet two more instances of Moonbeam's failure to timely report the media interests of Fred Constant. These additional two instances became known to Willson only after his Petition to Reopen the Record and Enlarge Issues was filed. Willson learned of the untimely-reported new media interests from Moonbeam's February 9, 1994 amendment. This supplement is filed within 15 days of receipt of that amendment.

In his Petition to Reopen the Record, Willson points out that Moonbeam failed once again to report a material media interest of Mary Constant's husband, Fred Constant. Mr. Constant is the general manager of KRSB, licensed to Middletown, California, which is in the same market as the Calistoga station. Despite the fact Mr. Constant began his employment as general

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manager of KRSB sometime at the end of November 1993, and despite the fact Willson filed his Petition to Reopen the Record on January 11, 1994, Moonbeam still did not bother to amend its application to report Mr. Constant's role as general manager until nearly another month later on February 9, 1994. It turns out, however, as disclosed in Moonbeam's Petition for Leave to Amend, that Moonbeam failed to timely report two more interests of Fred Constant: (1) Idaho Broadcasting Consortium, Inc.'s (IBC) application for a new FM station in Gooding, Idaho. (Mr. Constant is the 100 percent shareholder of the corporate applicant); and (2) IBC's proposal to purchase the construction permit for KMAT-FM, Sutter Creek, California. The application for the new FM station in Gooding, Idaho was filed five months ago on September 20, 1993; and the application for consent to the assignment of the construction permit for the Sutter Creek station was filed over two months ago on December 9, 1993.

There is now, more clearly than ever, a demonstrated pattern of Moonbeam's failure to timely disclose media interests. The number of late-reported or not-reported interests belie any claim of inadvertence. Merrimack Valley Broadcasting, Inc., 57 RR2d 713 (1984). As noted in Willson's Petition to Reopen the Record, there is, of course, also a motive for not reporting Fred Constant's media interests since these interests are presumed to be attributable to Ms. Constant. Moonbeam attempts to distance itself from any diversification demerit for Mr. Constant's role as the general manager of KRSB, his 100 percent ownership of an application for a new station in Gooding, Idaho, and from his

proposed purchase of a station in Sutter Creek, California. Moonbeam claims that Mr. Constant will divest these interests. In order to avoid any diversification demerit, Mr. Constant and Moonbeam had an obligation to make a divestiture commitment contemporaneously or at most within 30 days of commencement of Mr. Constant's employment as a general manager and, again, contemporaneously or at most within 30 days of filing the application for the new Gooding, Idaho station. This Moonbeam has not done. See Santee Cooper Broadcasting Company, 99 FCC 2d 781, 794-795 (Rev. Bd. 1984); Jerome Thomas Lamprecht, 99 FCC2d 1219, 1222, (Rev. Bd. 1984)(diversification demerit assessed for failure to make divestiture commitment within 30 days or within the time the interest must be reported pursuant to Rule 1.65); see also Big Bay Broadcasting, 3 FCC Rcd. 6481, 6487 (ALJ 1988) aff'd Rev. Bd., 4 FCC Rcd. 4676 (Rev. Bd. 1989) aff'd Comm. 5 FCC Rcd. 1294 (1990)(divestiture pledge must be made within 30 days of purchase of local weekly newspaper); see also Colonial Communications, Inc., 67 RR2d 999 at n. 5 (Rev. Bd. 1990). For the reasons set forth in Willson's Petition to Reopen the Record, the requested issues are further warranted by Moonbeam's failure to timely report yet another two media interests.<sup>1</sup>

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<sup>1</sup> Requested Issue 2 should be expanded to include the two additional instances of late reporting, which are the focus of this Supplement. Requested Issue 2 should now read, "To determine whether Moonbeam and/or Mary Constant has violated Rule 1.65 by failure to timely report Mr. Constant's broadcast interest in a station in Ketchum, Idaho, and by again later failing to report his interest in KRSH, for failure to timely report his interest in a new application for Gooding, Idaho, and for failure to timely report his interest in an assignment application to acquire KMAT in Sutter Creek, California and, if so, the effect thereof upon Moonbeam's and/or Mary Constant's basic qualification to be a Commission permittee/licensee."

Respectfully submitted,

GARY E. WILLSON

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February 28, 1994

[0068/C94awfSuppOpen]

By   
A. Wray Fitch III  
His Attorney

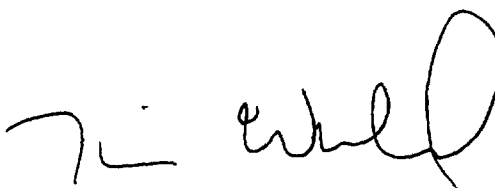
**CERTIFICATE OF SERVICE**

I, Tim Wineland, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent, this 28th day of February 1994, by first-class, postage-prepaid, U.S. Mail, copies of the foregoing SUPPLEMENT TO PETITION TO REOPEN THE RECORD AND ENLARGE ISSUES AGAINST MOONBEAM, INC. to the following:

\* The Honorable Edward Luton  
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Federal Communications Commission  
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Washington, D.C. 20554

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\* By Hand